THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION NO : 19354 of 2005

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Dated:13.09.2005

Between:

M.Trilok Singh, S/o.Narayan Singh,
R/o.3-1-536, Nimboliadda, Kacheguda, Hyderabad, and another.

..... PETITIONERS

AND

The District Collector, Hyderabad, and others.

.....RESPONDENTS

ORDER:

The present writ petition is filed seeking a writ of Mandamus declaring the action of respondent Nos.1 to 3 herein in interfering with the petitioners constitutional rights concerning the petitioners' property in Survey No.33 (corresponding to TS No.12) admeasuring 1805 square yards opposite to Ratna Nagar, near Fever Hospital, Hyderabad, as illegal and unconstitutional. The petitioners also seek a consequential direction to the respondents not to interfere with the petitioners' rights over the said property.

In support of the writ petition in their affidavit the petitioners made the following allegations. The land admeasuring Ac.0.26 gts in Survey No.33 (corresponding to TS No.12) is joint family property of Narayan Singh, father of the petitioners. After the death of their father on 17.07.1970, the property was devolved on the petitioners, their mother and grandmother. The names of the petitioners were duly mutated in the revenue records. In 1988 the fourth respondent proposed to widen the road and expand the bridge. The petitioner challenged the same by filing writ petition, being W.P.No.10286 of 1988. The fourth respondent contended that it is a Government land and therefore, this Court disposed of the writ petition on 14.07.1988, directing the petitioners to resolve the dispute in civil court. Accordingly, the petitioners filed O.S.No.1534 of 1988 on the file of the Court of the First Senior Civil Judge, City Civil Court, Hyderabad, for declaration of title and possession. The Civil Court by judgment dated 30.04.1998, decreed the suit declaring the petitioners' title to the land admeasuring 856 square metres in Survey No.33 (TS No.12), opposite Ratna Nagar, Bagh Lingampally Nala, and granted alternative relief of awarding compensation at Rs.700/- per square yard. Aggrieved by the same, the fourth respondent filed appeal, being CCCA No.29 of 2000, before this Court and the same is pending.

It is alleged by the petitioners that on instructions of the first respondent, respondent Nos.2 and 3 came to the petitioners' site on 25.08.2005 and 27.08.2005 and purporting to make certain marks for the purpose of constructing a wall without any prior notice and without due process of law. Therefore, apprehending that they might be dispossessed from the property, they filed the present writ petition.

Even at the stage of preliminary hearing, the second respondent filed a counter affidavit. The allegation that there is land belonging to the petitioners in TS No.12 in Survey No.33 is denied and it is stated that the land, which is now claimed by the petitioners, is a Nala (drainage canal). In the counter affidavit the second respondent after making reference to O.S.No.1534 of 1988 further made the following averments.

> The petitioners having obtained declaration with regard to 856 square metres now filed the present writ petition claiming a right to an extent of 1805 square metre in TS No.12 which is non-existing as per T.S.L.R. Record. The claim made by the petitioners in the present W.P. runs contrary to the case of the petitioners in Civil Suit O.S.No.1534/88 in view of the fact that as per the revenue records, a total extent of land in T.S.No.12 is only admeasuring 712 square metres, the present claim made by the petitioners to an extent of 1805 sq. Metres is baseless and misleading. The copy of the Town Survey

> Land Register pertaining to T.S.No.12 in Sy.No.33/3 is filed herewith to show the total extent of land of 712 sq.Metres (851 square yards). As the petitioners have been making claim for non-existing land for which the petitioners or their father Late M.Narayana Singh's land and title over and above 712 Sq.yards in T.S.No.12 of BaghLingmapally Village, the Writ Petition filed is misconceived and liable to be dismissed. The petitioners have been indulging an illegal activity of occupying part of NALA which carries surplus water of Hussain Sagar Lake to dump the sand and bricks for sale. The petitioners are prevented for occupying the NALA land as it may cause obstruction for passage of free flow of excess water released from the Hussain Sagar.

The petitioners have filed reply affidavit. But, there is no specific denial regarding the above averments in the counter. In para 6 of the reply affidavit it is stated that more than one TS number has been allotted for Survey No.33, that while TS No.11 is concerned with 712 square metres shown as Survey No.33/B, the balance of the land owned by the petitioners is part of TS numbers including TS Nos.12, 13 and 14. This would show that the petitioners are changing their stand from 1988 onwards when Municipal Corporation admittedly proposed road widening. Even there is variance in the allegations made by the petitioners in the affidavit accompanying the writ petition and reply affidavit. Be that as it is, the over view of the facts and circumstances leading to filing of this case would show that there is a serious title dispute between the petitioner and the Government/Municipal Corporation of Hyderabad with regard to the land in Survey No.33. There is also dispute as to whether the land, which the petitioners are claiming, forms part of drainage canal (Nala) or it is the property in the enjoyment of the petitioners. No doubt, the learned counsel for the petitioners, Sri.S.Niranjan Reddy, has strenuously made an attempt by producing various copies of revenue records and court decrees, *prima facie*, show that the entire land in Survey No.33 belong to Narayana Singh, the father of the petitioners. On the basis of evidence produced in the writ petition, however, it is not possible for this Court nor it is proper to decide the title of the petitioners in the writ petition.

It is axiomatic that a question of title dispute cannot be decided in the proceedings under Article 226 of the Constitution of India nor it is proper for this Court to appreciate the evidence produced by the rival claimants, especially, when there is a presumption in law that all roads, streets, drainage canals vests in the Government and concerned local bodies. A reference may be made to **State of Rajasthan v. Bhawani Singh, Parvatibai Subhanrao Nalawada v. Anwarali Hasanali Makani** and **Dwarka Prasad Agarwal v. B.D.Agarwal**. However, it is not necessary to make a reference to the relevant passages from all the judgments, suffice to extract the following passage from **Dwarka Prasad Agarwal**'s case (supra).

> A writ petition is filed in public law remedy. The High Court while exercising a power of judicial review is concerned with illegality, irrationality and procedural impropriety of an order passed by the State or a statutory authority. Remedy under Article 226 of the Constitution of India cannot be invoked for resolution of a private law dispute as contra distinguished from a dispute involving public law character. It is also well-settled that a writ

> remedy is not available for resolution of a property or a title dispute. Indisputably, a large number of private disputes between the parties and in particular the question as to whether any deed of transfer was effected in favour of M/s.Writer and Publishers Private Limited as also whether a partition or a family settlement was arrived or not, were pending adjudication before the Civil Courts of competent jurisdiction. The reliefs sought for in the writ petition primarily revolved round the order of authentication of the declaration made by one of the respondents in terms of the provisions of the said Act. The writ petition, in the factual matrix involved in the matter, could have been held to be maintainable only for that purpose and no other.

There is a dispute as noticed to hereinabove about the title of the petitioners. This writ petition is misconceived. Indeed, in 1988 when the petitioners approached this Court with almost the similar complaint, this Court refused to entertain the writ petition, being W.P.No.10286 of 1988, giving liberty to the petitioners to approach the Civil Court. Such a liberty is reserved to the petitioners to approach the Civil Court in this matter.

The writ petition, with the above observation, is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

13.09.2005

vs